

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
MARK A MONTGOMERY,) CASE NO. 10-21222 JPK
) Chapter 7
Debtor.)

ORDER DENYING MOTION TO VACATE DISCHARGE FOR SOLE
PURPOSE OF FILING REAFFIRMATION AGREEMENT ["MOTION"]

The Motion was filed by the debtor, by counsel, on July 30, 2010. The motion seeks to have the court vacate the order of discharge of the debtor entered in this case on June 23, 2010 for the apparent purpose of presenting a reaffirmation agreement with 1st Source Bank to the court. The sole basis for the requested relief is that the agreement was "not executed completely prior to entry of the Order of Discharge." No reason is given as to why the agreement was not executed sooner.

Setting aside an order of discharge has ramifications upon creditors and parties-in-interest who have assumed that the debtor's discharge has been granted. At minimum, a very concrete cause for vacating a discharge order must be presented to the court, one better than essentially "we just didn't do it on time." Moreover, the Motion was filed 37 days after the date of entry of the discharge, and if the need to enter into the agreement was so pressing, the court would have expected the motion to have been filed sooner. The proper procedure to be employed in a circumstance in which a reaffirmation agreement is "in the works" but the deadline for granting a discharge provided for by Fed.R.Bankr.P. 4004(c) is approaching – is to utilize the provision of Rule 4004(c)(2) to defer the entry of an order of discharge. Finally, the motion is essentially one under Fed.R.Bankr.P. 9024, and no supporting brief was filed as required by N.D.Ind.L.B.R. B-9023-1(a).

IT IS ORDERED that the Motion is Denied.

Dated at Hammond, Indiana on August 5, 2010.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor, Trustee, US Trustee